

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



May 4, 2006

Agenda ID #5643
Adjudicatory

TO: PARTIES OF RECORD IN CASE 06-01-018

This is the draft decision of Administrative Law Judge (ALJ) Bemederfer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ BEMESDERFER** (Mailed 5/4/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Pacific Continental Textiles, Inc.

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 06-01-018
(Filed January 27, 2006)**OPINION DISMISSING COMPLAINT****Summary**

We dismiss this complaint for failure to state any ground on the basis of which relief may be granted. Pub. Util. Code § 1702 requires that a complaint must allege either a violation of law or a violation of a rule or order of this Commission. This complaint alleges none of these violations and accordingly must be dismissed. Consideration of the circumstances giving rise to the complaint provides no basis for reaching a different result.

Background

Plaintiff's operations are located at 2880 Ana Street in Long Beach. The location is served by two different electric meters, TOU-8 and GS-2. In January 2002, Southern California Edison (SCE) mistakenly stopped billing plaintiff for electricity provided through the TOU-8 meter. Plaintiff immediately noticed a dramatic reduction in its electric bill. On May 13, 2002, one of

plaintiff's employees phoned a customer service representative at SCE to inquire about the billing situation. When the customer service representative offered to transfer the call to an SCE employee who handled commercial accounts, plaintiff's employee hung up. For the next 32 months, plaintiff continued to use, but not pay for, electricity supplied through the TOU-8 meter. Plaintiff regularly paid for electricity supplied through the GS-2 meter. In October 2004, SCE discovered the billing error and sent plaintiff a bill for 34 months of electric use as shown on the TOU-8 meter. The bill totaled \$1,315,914.99. Plaintiff and SCE thereafter engaged in negotiations for a lower bill and a payment schedule. Unwilling to agree to SCE's offer of a small reduction in the bill and an extended payment schedule, plaintiff filed an informal complaint with the Commission's Consumer Affairs Branch (CAB). CAB responded with a letter, dated September 9, 2005 which dismissed the informal complaint and advised plaintiff that SCE was acting within the terms of its tariff in seeking payment for the unbilled electricity. Plaintiff filed this action on January 27, 2006.

Discussion

The basic question presented by this complaint is whether it states facts sufficient to constitute a cause of action against SCE. In examining that question, we are mindful that pursuant to § 1702 of the Pub. Util. Code, a complaint must allege a violation of law or a violation of a rule or order of this commission.¹ A complaint that fails to do so is *ipso facto* insufficient.

¹ § 1702 reads, in relevant part, that a complaint shall set forth "any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, *in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.*" [Emphasis supplied.]

SCE's Tariff Rule 17-D permits it to back-bill for undercharges for a period not to exceed three years.² It is undisputed that the period for which plaintiff was undercharged was 34 months. Accordingly, SCE has the right, under its tariff, to recover the undercharges for that period.

Nonetheless, plaintiff asserts that SCE should be barred from enforcing its rights under its tariff because SCE should have known that it was undercharging plaintiff for electricity usage during the 34 month period. Plaintiff bases this assertion on a single phone call it placed to an SCE customer service representative on May 13, 2002. The customer service representative's contemporaneous notes of the phone call indicate that he attempted to transfer the caller to an SCE employee who specialized in commercial accounts and the caller hung up. Thereafter, plaintiff made no attempt to get in touch with SCE even though it was aware that it was being substantially undercharged for electrical use at the 2880 Ana Street property.

The facts admitted by the parties in the pleadings establish that plaintiff was aware from early 2002 on that it was being substantially undercharged for electricity use at the 2880 Ana Street property. Aside from placing a single phone call in May 2002, plaintiff sat on the knowledge for almost three years. In the meantime, SCE was rendering monthly bills it believed to be accurate and plaintiff was paying them. That pattern was insufficient to place SCE on notice that an undercharge situation existed. Plaintiff knew that it was being substantially undercharged and kept silent. SCE discovered the undercharge

² Tariff Rule 17-D reads in relevant part: "When SCE ...undercharges a customer as a result of a Billing Error, SCE may render an adjusted bill *for the amount of the undercharge.*" [Emphasis supplied.]

during the three year retroactive billing period permitted by its tariff rule and demanded payment. Nothing in the pleadings provides any basis for prohibiting SCE from collecting the moneys due it.

In conclusion, the complaint fails to allege that SCE violated any law or any rule or order of this commission, as required by § 1702, and is therefore legally insufficient. This conclusion is not changed by consideration of the facts surrounding the undercharge. As between plaintiff and SCE, plaintiff was in the better position to notice the undercharge. SCE's failure to notice the undercharge for a period of 34 months does not bar it from asserting its rights under its tariff.

Categorization

We confirm the categorization of this case, in the Instructions to Answer, as an adjudicatory proceeding but conclude that hearings are not necessary.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Karl Bemederfer is the assigned ALJ.

Findings of Fact

1. SCE mistakenly ceased billing plaintiff for electricity supplied through the TOU-8 meter located at the 2880 Ana Street property in January 2002.
2. Plaintiff used but did not pay for electricity supplied through the TOU-8 meter from February 2002 to October 2004.

3. Plaintiff owes defendant \$1,315,914.99 for electricity used but not paid for in the period February 2002 to October 2004.

Conclusions of Law

1. SCE's Tariff Rule 17-D authorizes the utility to bill for and collect undercharges resulting from a billing error.

2. The phone call from plaintiff to SCE's customer service representative in May 2002 was inadequate notice of the existence of a billing error at the 2880 Ana Street property.

3. SCE has not violated any law or any rule or order of this Commission in its dealings with plaintiff.

4. The complaint should be dismissed for failure to state any ground on which relief may be granted.

5. This proceeding should be closed.

O R D E R

1. The complaint is dismissed with prejudice.

2. The need for hearing determination is changed. No hearing is necessary.

3. Case 06-01-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.